



neil solomon <neilbsolomonesq@gmail.com>

## Motion for Leave to Amend

**Robert Christie <RChristie@henderson-lyman.com>**

**Fri, Apr 25, 2008 at 1:46 PM**

To: neil solomon <neilbsolomonesq@gmail.com>

Cc: hvictor@optionsxpress.com, "Jeffry M. Henderson" <jhenderson@henderson-lyman.com>

Dear Mr. Solomon:

Your initial premise is in error. I did not represent to the Court that one of the primary statutory elements for vacating an arbitration award, that the arbitrators exceeded their powers, was a subset of the allegations made in the Amended Application to Vacate – that the arbitrators made a gross error of judgment in law and that they made a gross mistake of fact. To the contrary, I represented to the Court that allegations concerning gross errors of law and gross mistakes of fact were a subset of the statutory element – that the arbitrators exceeded their power. Accordingly, that was why I was able to represent to the Court yesterday that no new facts needed to be pled in the proposed amendment to the Application.

In either case, your attempt to have optionsXpress file the transcripts to the hearing with the Court is nothing more than a blatant attempt to receive copies of the transcripts at no charge, much to the detriment of the court reporter who transcribed the hearing tapes. In your e-mail to me dated February 14, 2008 at 3:25 pm., you represented that "Ms. Hale expects to request a full copy of the arbitration transcript." I have never received any such request. However, in my reply e-mail to you dated February 14, 2008 at 5:44 p.m., I represented to you that the tapes are available from FINRA. optionsXpress has incurred significant costs in having the hearing tapes transcribed, and has no intention of providing you with those transcripts at no charge. I will gladly provide you with the name of the court reporter if you want to order a set for your own use.

Accordingly, and based on the above, optionsXpress will object to the motion you referred to in your e-mail below. Your actions in this matter and in the Florida Action have caused the parties significant expense and delay in this matter. I would suggest that you refrain from any unnecessary filings, as you have proposed, when less expensive alternatives – such as ordering transcripts from the court reporter, can be easily accomplished.

Bob Christie

**Robert B. Christie**

**Henderson & Lyman**

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**From:** neil solomon [mailto:[neilbsolomonesq@gmail.com](mailto:neilbsolomonesq@gmail.com)]  
**Sent:** Friday, April 25, 2008 12:08 PM  
**To:** Robert Christie  
**Cc:** [hvictor@optionsxpress.com](mailto:hvictor@optionsxpress.com); Jeffry M. Henderson  
**Subject:** Motion for Leave to Amend

Based on your representation to Judge Kendall yesterday that alleging that the arbitrators exceeded their

powers/authority is no more than a "subset" of your previous argument that the arbitrators made errors, I assume that you will not be attaching as exhibits to your proposed second amended application to vacate any excerpts of the arbitration transcript that have not been previously filed with your amended application to vacate?

If this is not the case, I trust you will not object to the motion I plan to file to order your client to file the entire arbitration transcript as an exhibit?

Please confirm. Thanks

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